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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT SEATTLE

11 JAMES DEAN WILKS,

12 Plaintiff,

13 v.

14 KING COUNTY, *et al.*,

15 Defendants.
16

CASE NO. C07-1720 RSM

ORDER DENYING
DEFENDANTS' MOTION TO
STAY, GRANTING
DEFENDANTS' MOTION TO
CONTINUE TRIAL, AND
STRIKING RULE 39.1 DEADLINE

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18 This matter comes before the Court on "Defendants' Motion for Relief From Rule 39.1
19 Deadline, to Stay Proceedings Pending Plaintiff's Related Criminal Proceedings, and,
20 Alternatively, for Continuance of Trial Date" (Dkt. #41). This is a civil rights action brought
21 under 42 U.S.C. § 1983 by Plaintiff, a prisoner proceeding pro se and in forma pauperis.
22 Plaintiff originally named King County and fourteen individual defendants in his complaint,
23 however, his claims have been dismissed as to King County and eleven of the individuals.
24 (Dkt. #34). The remaining claims are that defendants, Sergeant Stowers, Sergeant Owens, and
25 Acting Sergeant Louis, used excessive force when they allegedly pepper-sprayed Plaintiff on
26 or about August 27, 2007 while Plaintiff was incarcerated. Plaintiff is the defendant in two
27 pending criminal cases in King County Superior Court where he is charged with numerous
28 counts of felony harassment and intimidating a judge, one count of making threats to bomb or

1 damage property, and other charges. (Dkt. #41-2). According to the charging documents in
2 those criminal proceedings, much of the charged conduct occurred during the time period
3 between August 23, 2007 through September 21, 2007. (*Id.*). Sergeant Stowers, one of the
4 three remaining defendants in this case, is a victim and witness in regard to one of the felony
5 harassment charges pending against Plaintiff in King County. King County Cause No. 08-1-
6 00841-6 SEA. Trials in the state criminal cases have been continued and are now set for April
7 5, 2010 and April 6, 2010. Trial in this proceeding is currently scheduled for April 5, 2010.

8 Defendants request that this case be stayed pending the resolution of the primary state
9 proceeding, King County Cause No. 08-1-00841-6 SEA, under the *Younger* doctrine. *See*
10 *Younger v. Harris* 401 U.S. 37 (1971). In the alternative, they request that the trial be
11 continued so that it does not conflict with the state criminal proceedings. Additionally,
12 Defendants request relief from Local Rule CR 39.1 requirements regarding mediation.
13 Although Defendants' counsel stated in her declaration that she served Plaintiff with a copy of
14 this motion, Plaintiff did not file a response.

15 16 **I. YOUNGER ABSTENTION**

17 In *Younger v. Harris*, the plaintiff sued in federal court to enjoin a state criminal
18 prosecution on the ground that the state law providing the basis for his prosecution was
19 unconstitutional. The Supreme Court held that the federal district court could not grant
20 injunctive relief because principles of comity and respect for state functions should prevent it
21 from "unduly interfere[ing] with the legitimate activities of the States." *Id.* at 43-45; *see also*
22 *Gilbertson v. Albright*, 381 F.3d 965, 970 (2004) (en banc) (summarizing the history of the
23 *Younger* doctrine). So long as there is an adequate opportunity to present the constitutional
24 challenge in the state proceedings, the district court should abstain in order to allow the state
25 to address the constitutionality of its own statutes.

26 In *Samuels v. Mackell*, the Court extended the doctrine to prevent federal courts from
27 granting a declaratory judgment that a state law underlying a state criminal prosecution is
28 unconstitutional, while that prosecution is pending. 401 U.S. 66 (1971). The Court reasoned

1 that a declaratory judgment was practically no different than an injunction because “ordinarily
2 a declaratory judgment will result in precisely the same interference with and disruption of
3 state proceedings that the longstanding policy limiting injunctions was designed to avoid.” *Id.*
4 at 72. Through a later series of Supreme Court cases, the *Younger* doctrine was extended to
5 interruptions of state *civil* proceedings that “implicate important state interests,” meaning the
6 proceeding is quasi-criminal or necessary for the vindication of important state policies.
7 *Middlesex County Ethics Comm. v. Garden State Bar Ass’n*, 457 U.S. 423, 432 (1982).

8 The Ninth Circuit, sitting en banc, has held that *Younger* principles can apply to
9 damages actions, including suits under § 1983. In *Gilbertson v. Albright*, Oregon’s State
10 Board of Examiners for Engineering and Land Surveying initiated disciplinary proceedings
11 against a surveyor. The surveyor brought a § 1983 action for damages in federal court while
12 the disciplinary proceedings were ongoing, alleging that the Board retaliated against him for
13 exercising his First Amendment rights, violated his due process rights, and denied him equal
14 protection. *Id.* at 982. The court held that the constitutional issues raised in the federal
15 complaint “go to the heart of [the federal plaintiff’s] opposition to the Board’s action in the
16 state proceeding, such that a federal court’s decision on the merits of [the] claims would have
17 the same practical effect on the state proceeding as an injunction.” *Id.* When damages are at
18 issue, however, the district court should stay rather than dismiss the federal action so that the
19 federal plaintiff retains an opportunity to seek compensation in the forum of his choice. *Id.* at
20 984.

21 As this history makes clear, the touchstone of the *Younger* doctrine is restraint from
22 interference with ongoing state criminal proceedings. Here, however, Defendants have not
23 indicated how this § 1983 suit stemming from the alleged use of excessive force could
24 interfere with the criminal proceedings in King County. Defendants only contend that some
25 of the charges in King County “relate to [Plaintiff’s] incarceration” and that one of the
26 defendants in this case is a victim in one of the charged state crimes. (Dkt. #41 at 2).
27 Nowhere do Defendants claim that the state court proceedings concern the same events or
28 matters as these proceedings, the alleged pepper-spraying of Plaintiff. Nor do Defendants

1 claim that a decision by this Court on the merits of this case would have any effect on the
2 state proceedings. Without any explanation of how this § 1983 suit could interfere with the
3 ongoing state criminal proceedings, this Court cannot grant a stay.

4 At the same time, this Court cannot say for certain that this federal proceeding will not
5 interfere with the state criminal proceedings; it says only that Defendants have made an
6 insufficient showing thus far. Accordingly, the motion to stay based on the *Younger* doctrine
7 is DENIED without prejudice.

8 9 **II. CONTINUANCE OF TRIAL DATE**

10 In the alternative, Defendants request that the trial date in this case be postponed
11 because it conflicts with the state criminal trials. This request is GRANTED. The jury trial in
12 this matter will be set for June 1, 2010. The Clerk will issue a scheduling order reflecting this
13 change and setting the deadlines for motions in limine and other pretrial matters in relation to
14 the new trial date.

15 16 **III. RULE 39.1**

17 Defendants also seek relief from any requirements under Local Rule CR 39.1 to
18 consider alternative dispute resolution. Rule 39.1(a)(4) states, “Unless otherwise ordered by
19 the court in a specific case, this rule applies to all civil actions in this court, . . . , except
20 prisoner petitions,” Contrary to Defendants’ belief, the Court was not “otherwise
21 order[ing]” that Rule 39.1 apply to this prisoner case when it included a Rule 39.1 mediation
22 deadline in its form scheduling order. Rule 39.1 does not apply to this case because it is a
23 prisoner petition.

24 25 **IV. CONCLUSION**

26 Having reviewed the relevant pleadings, the declarations and exhibits attached thereto,
27 and the remainder of the record, the Court hereby finds and ORDERS:

28 (1) Defendants’ Motion (Dkt. #41) is GRANTED IN PART AND DENIED IN PART.

1 (2) Defendants' Request for a stay under *Younger* is DENIED without prejudice.

2 (3) The trial date will be continued to June 1, 2010. The clerk will issue a new
3 scheduling order reflecting the change.

4 (4) Rule 39.1 does not apply to this case since it is a prisoner petition.

5 (5) The Clerk is directed to forward a copy of this Order to all counsel of record.

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7 DATED this 25th day of February, 2010.

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11 RICARDO S. MARTINEZ
12 UNITED STATES DISTRICT JUDGE
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